

M e m o r a n d u m**490.0095**

To: Mr. Richard W. Gerber
Refunds Unit

Date: July 9, 1969

From: Ronald L. Dick
Tax Counsel

Subject: S--- D--- M--- H---, Inc.

SR -- XX-XXXXXX

This is in reply to your March 15, 1990 mini-memo regarding a claim for refund filed by S--- D--- M--- H---, Inc. Attorney S--- L. M--- provided the following information in his February 22, 1990 letter to your office:

“B--- and E--- F--- purchased a mobilehome on or about February 14, 1988 from S--- and C--- A--- through the auspices of S--- D--- M--- H---, Inc. Following the purchase of the mobilehome, a dispute arose between the A---s and the F---s concerning the condition of the mobilehome. The A---s sued the F---s and the F---s cross-complained against the A---s and S--- D--- M--- H---, Inc. The suit (Case Number XXXXXX in --- --- Superior Court) continued until it was verbally settled in the Superior Court on or about August 21, 1989. That settlement agreement was recorded in open court on that date. However, the implementation of that settlement continued thereafter. Under the terms of the settlement, the sale was rescinded and the F---s gave up possession of the mobilehome on or about October 21, 1989.

“Under the terms of the Compromise Settlement and Mutual Release Agreement signed by all parties to the litigation, in paragraph 2.6 states ‘All parties agree to reasonably cooperate to recover any monies paid in this transaction to third parties, such as the State of California, so that such additional monies may be returned to the F---S. No party represents that any such monies exist or are recoverable.’”

You asked for advice as to your course of action. We believe that the refund should be denied. The legal staff has concluded that, when a return of merchandise and refund of money is made in settlement of litigation, the returned merchandise deduction is not applicable. The amounts returned to the purchaser pursuant to a settlement are in the nature of damages which do not differ in any realistic sense from any other damages paid by a seller as the result of the seller’s wrongful actions in the conduct of the transaction.

We hope this answers your question; however, if you need further information, feel free to write directly to me.

RLD:sr